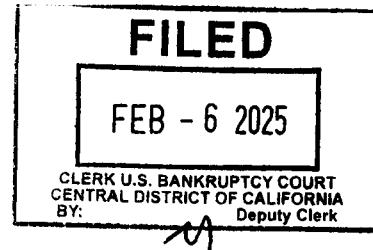


1 Jeffrey Adams Gomez Pro Per  
2 P.O. Box 1718  
3 Upland, CA 97185  
(909) 477-9821  
4 jeff@jeffadams.com



5  
6 **UNITED STATES BANKRUPTCY COURT**  
7  
**CENTRAL DISTRICT OF CALIFORNIA, SANTA ANA DIVISION**

8 In re

9  
10 KRISTINA LYNN SMITH

11  
12 Debtor,

Case No.: 8:24-bk-12527-TA

Chapter 7

**MOTION TO STRIKE DEBTORS  
RESPONSE TO MOTION TO DISMISS  
BANKRUPTCY CASE DUE TO BAD  
FAITH FILING**

Hearing Information:

Date: 2/11/2025

Time: 11:00 AM

Place: Courtroom 5B (Zoom)

17  
18 **MOTION TO STRIKE DEBTOR'S RESPONSE TO MOTION TO DISMISS  
BANKRUPTCY CASE DUE TO BAD FAITH FILING**

19 TO THE HONORABLE THEODOR ALBERT, UNITED STATES BANKRUPTCY JUDGE,  
20 THE OFFICE OF THE UNITED STATES TRUSTEE, AND ALL INTERESTED PARTIES:

21 Creditor and Movant, JEFFREY ADAMS GOMEZ (hereinafter "Movant"), respectfully moves  
22 this Court to strike Debtor KRISTINA LYNN SMITH's ("Debtor") Response to Motion to  
Dismiss Bankruptcy Case Due to Bad Faith Filing (the "Response"), and states as follows:

23  
24 **I. INTRODUCTION**

25 1. On January 21, 2025, Movant filed a Motion to Dismiss the Debtor's Chapter 7  
26 Bankruptcy Case on the grounds of bad faith pursuant to 11 U.S.C. § 707(a).  
27 2. On January 28, 2025, the Chapter 7 Trustee filed an Opposition to Movant's Motion.

28  
**TO MOTION TO STRIKE DEBTORS RESPONSE TO MOTION TO DISMISS BANKRUPTCY CASE  
DUE TO BAD FAITH FILING**

- 1       3. On February 4, 2025, Debtor filed her Response to the Motion to Dismiss, failing to  
2       adequately address the legal arguments presented by Movant and relying on  
3       inadmissible, irrelevant, and misleading statements.
- 4       4. Movant hereby requests that the Court strike Debtor's Response in its entirety on the  
5       grounds that it fails to refute Movant's legal arguments, contains unsupported factual  
6       assertions, and improperly attempts to supplement the Trustee's arguments without  
7       independent legal reasoning.

## 6           II. GROUNDS FOR STRIKING DEBTOR'S RESPONSE

### 7           A. Debtor's Response Improperly Attempts to Supplement the Trustee's Opposition

- 8       5. Debtor's Response Was Filed Late – The Response was due within the deadline set by  
9       the Court's rules, yet it was filed seven (7) days late without any motion for an  
10      extension or justification for the delay. Bankruptcy courts strictly enforce filing  
11      deadlines to ensure fairness and efficiency in proceedings. A late filing is grounds for  
12      striking a response, especially where the Debtor has made no attempt to request leave  
13      for late submission. Courts have routinely rejected untimely filings that fail to comply  
14      with procedural rules, and this Court should do the same here.
- 15       6. **Debtor's Response Was Not Signed** – The Response fails to meet the basic procedural  
16      requirement of including a signature, making it legally deficient under Rule 9011 of the  
17      Federal Rules of Bankruptcy Procedure. A pleading or motion must be signed by the  
18      filing attorney or the party, certifying its accuracy and compliance with the rules. The  
19      absence of a signature renders the Response procedurally improper and invalid, and it  
20      should be stricken from the record as a defective filing.
- 21       7. Because the Response was both untimely and unsigned, it is not properly before the  
22      Court and should be disregarded in its entirety.

### 23           B. Debtor's Response Fails to Address the Legal Standard for Dismissal Under 11 24           U.S.C. § 707(a)

- 25       8. Debtor's Response merely reiterates the Trustee's argument that bad faith cannot  
26      constitute "cause" for dismissal under Chapter 7. However, as Movant's Motion  
27      establishes, multiple courts have found that bad faith is a valid basis for dismissal under  
28      § 707(a), contrary to Debtor's assertions. The Trustee and Debtor selectively rely on  
29      *Neary v. Padilla*, 222 F.3d 1184 (9th Cir. 2000), which held that bad faith alone may  
30      not constitute cause under § 707(a). However, courts have since clarified that while bad  
31      faith is not explicitly listed in § 707(a), it can still constitute cause for dismissal when  
32      viewed under the totality of the circumstances.
- 33       9. Debtor fails to cite any legal authority distinguishing the numerous Chapter 7 cases in  
34      which courts have dismissed for bad faith. In *In re Piazza*, 719 F.3d 1253 (11th Cir.  
35      2013), the Eleventh Circuit held that bad faith constitutes "cause" for dismissal under §

28           TO MOTION TO STRIKE DEBTORS RESPONSE TO MOTION TO DISMISS BANKRUPTCY CASE  
29           DUE TO BAD FAITH FILING

1 707(a), particularly when a debtor abuses the bankruptcy system to manipulate creditors  
2 or evade financial obligations. Similarly, *In re Krueger*, 812 F.3d 365 (5th Cir. 2016),  
3 reaffirmed that dismissal is appropriate where a debtor's conduct demonstrates a  
4 deliberate misuse of bankruptcy protections. Likewise, *In re Zick*, 931 F.2d 1124 (6th  
5 Cir. 1991), confirmed that courts have the discretion to dismiss Chapter 7 cases when  
6 the debtor's intent is to hinder, delay, or manipulate creditors rather than seek genuine  
7 financial relief.

8 10. The Debtor makes no effort to rebut or distinguish these cases, nor does she provide any  
9 legal precedent to support her claim that bad faith cannot be considered under § 707(a).  
10 Instead, she relies on conclusory statements and unsupported assertions. Courts  
11 recognize that while bad faith alone may not always suffice, when combined with other  
12 factors such as fraudulent intent, abuse of the system, or evasion of lawful obligations,  
13 it is sufficient grounds for dismissal under § 707(a).

14 11. The Debtor's actions fall squarely within the type of conduct deemed abusive in these  
15 cases. She filed for Chapter 7 bankruptcy immediately after an adverse state court ruling  
16 ordering the sale of the community property, indicating an improper motive. She further  
17 failed to disclose assets accurately, made misrepresentations about her financial status,  
18 and attempted to use the bankruptcy process as a shield from state court enforcement.  
19 These factors, when viewed in their totality, demonstrate precisely the kind of bad faith  
20 that justifies dismissal under well-established case law.

21 **C. Debtor's Response Contains Irrelevant and Misleading Statements**

22 12. Debtor's claim that she "lost" the Rolex watch in 2022 is an unsupported assertion  
23 without any evidentiary backing. Such a claim, made solely in a self-serving declaration,  
24 lacks credibility and should be stricken. The Debtor provides no police report, insurance  
25 claim, or other documentation to confirm the alleged loss. Given that the Rolex was  
26 omitted from the bankruptcy schedules entirely, the claim that it was lost only after the  
27 omission was challenged raises further concerns about the reliability of her statements.  
28 In fact, in our Family Law Matter as recently as 2023 on her Declaration of Assets, she  
claimed she had the Rolex in her possession, which is a stark contrast to what she is  
claiming and refutes any claim that she lost the Rolex in 2022. **See Exhibit "A".** Courts  
have routinely dismissed similar unverified assertions when raised as an afterthought in  
response to legal challenges.

13. Debtor's assertion that the storage unit was "closed in October 2023 for failure to make  
payments" is irrelevant to whether she had the obligation to disclose it in her bankruptcy  
schedules. The key issue is whether she possessed or controlled assets stored within that  
unit before its closure. If the unit contained valuable items prior to its forfeiture, the  
failure to list it in her schedules remains a material omission. The Debtor does not

29 **TO MOTION TO STRIKE DEBTORS RESPONSE TO MOTION TO DISMISS BANKRUPTCY CASE  
30 DUE TO BAD FAITH FILING**

1 provide any documentation to show when and how the contents were handled, further  
2 undermining the credibility of this claim.

3 14. Debtor's claim that her medical debt is not covered by insurance is also unsupported by  
4 documentation. Movant has provided sufficient evidence demonstrating that many of  
5 these debts could have been paid by Kaiser if properly submitted. The Debtor fails to  
6 present insurance denial letters, policy exclusions, or other records proving that the debts  
7 are not covered. Instead, she merely asserts that coverage does not apply, without any  
8 substantiation. Courts have recognized that debtors bear the burden of proving the  
9 necessity and legitimacy of their claims, and vague, unsubstantiated statements fail to  
10 meet this standard. There have been no claims submitted by any medical providers.

11 **Debtor's Response Relies on Hearsay and Inadmissible Self-Serving Statements**

12 15. The Response is based largely on Debtor's own declaration, which is filled with hearsay,  
13 self-serving statements, and conclusions lacking factual support. A response must be  
14 supported by objective, verifiable evidence, which is absent in this case. Assertions  
15 about the disposition of her Rolex, the closure of a storage unit, and her medical debts  
16 are entirely uncorroborated and should be stricken from the record.

17 16. Courts have held that a party's "self-serving declaration, without more, is insufficient to  
18 create a genuine dispute of material fact." See *FTC v. Publrs. Bus. Servs. Inc.*, 540 F.  
19 App'x 555, 558 (9th Cir. 2013). In this case, the Debtor's entire Response hinges on her  
20 personal account, which is unsupported by independent evidence. Without  
21 corroborating documentation, these statements lack probative value and should not be  
22 considered by the Court.

23 17. Debtor's declaration fails to provide any documentary evidence—such as financial  
24 statements, sworn affidavits from third parties, or corroborating records—to substantiate  
25 her claims, rendering them inadmissible. For example, if the Rolex was indeed lost, a  
26 police report or insurance claim should exist. If the storage unit was closed, records from  
27 the storage facility should confirm this, along with an inventory of any forfeited items.  
28 The failure to provide such evidence suggests that these claims are either fabricated or  
exaggerated to avoid dismissal.

27 **TO MOTION TO STRIKE DEBTORS RESPONSE TO MOTION TO DISMISS BANKRUPTCY CASE  
28 DUE TO BAD FAITH FILING**

1                   **D. Debtor's Response Improperly Attempts to Supplement the Trustee's Opposition**

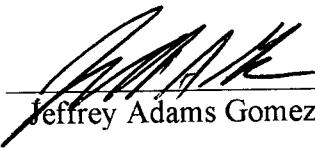
2                   18. Debtor does not provide an independent legal argument; instead, she attempts to bolster  
3                   the Trustee's Opposition by restating his arguments without adding any substantive  
4                   legal reasoning. Rather than distinguishing the legal precedents cited in Movant's  
5                   Motion to Dismiss, Debtor simply adopts the Trustee's position and repeats the assertion  
6                   that bad faith is not a basis for dismissal under Chapter 7—without addressing the  
7                   numerous cases that have held otherwise.

8                   19. Debtor's failure to present new legal analysis or case law supporting her position  
9                   suggests that her Response serves no legitimate purpose beyond redundancy and should  
10                   be stricken. A proper opposition must present independent reasoning and cite applicable  
11                   precedent, rather than merely echoing arguments already made by another party.  
12                   Because Debtor fails to do so, her Response is legally deficient and should be  
13                   disregarded in its entirety.

14                   **III. CONCLUSION**

15                   For the reasons stated above, Movant respectfully requests that this Court strike Debtor's  
16                   Response to Motion to Dismiss Bankruptcy Case Due to Bad Faith Filing in its entirety, or in  
17                   the alternative, disregard the unsupported and inadmissible portions of Debtor's Response.

18                   Dated: February 6, 2025



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19                   Jeffrey Adams Gomez, Pro Per

20                   **TO MOTION TO STRIKE DEBTOR'S RESPONSE TO MOTION TO DISMISS BANKRUPTCY CASE**  
21                   **DUE TO BAD FAITH FILING**

## Exhibit “A”

## STATE OF CALIFORNIA, COUNTY OF ORANGE

I have read the foregoing PETITIONER'S RESPONSES TO FORM INTERROGATORIES - FAMILY LAW, SET TWO

and know its contents.

**CHECK APPLICABLE PARAGRAPHS**

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am  an Officer  a partner  
 a \_\_\_\_\_ of

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason.

I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.  The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am one of the attorneys for  
 a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on January 23, 2023 , at Laguna Niguel , California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

KRISTINA SMITH.....

TYPE OR PRINT NAME

SIGNATURE

**PROOF OF SERVICE**

1013a (3) CCP Revised 2004

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the county of \_\_\_\_\_, State of California.

I am over the age of 18 and not a party to the within action; my business address is:

On

, I served the foregoing document described as

on \_\_\_\_\_ in this action

by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:

by placing  the original  a true copy thereof enclosed in sealed envelopes addressed as follows:

**BY MAIL**

\*I deposited such envelope in the mail at \_\_\_\_\_, California.

The envelope was mailed with postage thereon fully prepaid.

As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at

California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on \_\_\_\_\_, at \_\_\_\_\_, California.

\*\*(BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

Executed on \_\_\_\_\_, at \_\_\_\_\_, California.

(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

(Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

TYPE OR PRINT NAME

SIGNATURE

\*BY MAIL SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL SLOT, BOX, OR BAG)

\*\*(FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER)

Assets - Description	Sep. Prop.	Date Acquired	Current Gross Fair Market Value (\$)	Amount of Money Owed or Encumbrances (\$)
(a) 2008 Rolex Watch [W]	P	Dur. Marr.	Unknown	Unknown
(b) Rolex Watches (4) [H]		Dur. Marr.	Unknown	Unknown
(c) Gold [H]		Dur. Marr.	Unknown	Unknown
(d) Silver [H]		Dur. Marr.	Unknown	Unknown
(e) Engagement/Promise Ring [H]		Dur. Marr.	9,000	0
(f) Rare blue stone [H]		Dur. Marr.	Unknown	Unknown
<b>Total</b>			<b>\$0</b>	<b>\$0</b>

## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:  
1384 Augusta Drive  
Upland, Ca 91786

A true and correct copy of the foregoing document entitled: **NOTICE OF MOTION FOR** (specify name of motion)

~~Supplemental Declaration in Response To Trustee's Opposition To Motion To Dismiss~~ *JG*

~~MOTION TO STAY THE PROSECUTION OF THE CASE DUE TO BANKRUPTCY~~  
will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

- 1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (date) 2/4/2025, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:  
Richard Marshack. rmarshack@marshackhays.com  
US Trustee. ustpregion.16sa@usdoj.gov  
Julie J. Villalobos. julie@oaktreelaw.com

Service information continued on attached page

- 2. SERVED BY UNITED STATES MAIL:**

On (date) 2/4/2025, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Honorable Theodor C. Albert, Chief Judge  
United States Bankruptcy Court  
411 West Fourth Street, Suite 5085, Courtroom 5B  
Santa Ana, Ca 92701-4593

Service information continued on attached page

- 3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) \_\_\_\_\_, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

2/4/2025

Lisa Tobin

Date

Printed Name

*Lisa Tobin*  
Signature